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In the Supreme Court of the United States

October Term, 1957

SATURN OIL & GAS COMPANY, INC., PETITIONER

v.

FEDERAL POWER COMMISSION

On Petition for a Writ of Certiorari To the United States Court of Appeals for the Tenth Circuit

---

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

GEORGE COCHRAN DOUB,
Assistant Attorney General,

PAUL A. SWEENEY,
ROBERT S. GREEN,
Attorneys,
Department of Justice,
Washington 25, D. C.

WILLARD W. GATCHELL,
General Counsel,
Federal Power Commission,
Washington 25, D. C.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (Pet. App. 1-a—16-a) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the Tenth Circuit was entered on November 20, 1957. The petition for a writ of certiorari was filed on January 16, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether sales of natural gas in interstate commerce for resale made at the wellhead prior to the completion of gathering are subject to regulation by the Federal Power Commission under the Natural Gas Act.

STATUTE INVOLVED

Section 1(b) of the Natural Gas Act of June 21, 1938, 52 Stat. 821, 15 U.S.C. 717(b), provides:

> (b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

STATEMENT

Petitioner, a small, unintegrated oil company, sought review in the court below of orders of the Federal Power Commission holding that its sales of natural gas are sales in interstate commerce for resale and that petitioner is therefore a "natural-gas company" within the meaning of Section 1(b) of the Natural Gas Act, *supra*. (Pet. App. 2-a). Petitioner owns and operates natural gas properties only within the State of Kansas; its wells produce a very dry gas, requiring neither processing nor dehydration,

and all of this gas is sold by petitioner at the wellhead to interstate pipeline companies for ultimate consumption by the public (Pet. App. 3-a). The "basic question" presented to the court below by the petition for review (Pet. App. 5-a) was "whether natural-gas sales at the wellhead by a small unintegrated company to an interstate pipeline company for resale for ultimate public consumption are controlled by the Natural Gas Act." The Court of Appeals held that they were. Rejecting petitioner's contention that its wellhead sales were within the language of Section 1(b) of the Act exempting from Commission jurisdiction "the production or gathering of natural gas," the court held that under the decision of this Court in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, the Federal Power Commission had jurisdiction of all sales by any producer of natural gas in interstate commerce for resale (Pet. App. 13-a—14-a).

ARGUMENT

1. Subsequent to the filing of the petition for a writ of certiorari in this case, the precise issue posed by the petition was definitively decided by this Court adversely to petitioner. *Cities Service Gas Co.* v. *State Corporation Commission of Kansas*, No. 85, this Term, decided January 20, 1958.[1]

Petitioner has expressly recognized (Pet. 16) that a determination in *Cities Service* upholding the ex-

[1] See, also, Nos. 86, 111-113, this Term, *Michigan Wisconsin Pipe Line Company, et al.* v. *Corporation Commission of the State of Oklahoma, et al.*, decided January 27, 1958, on the authority of the *Cities Service* case.

clusive jurisdiction of the Federal Power Commission to regulate wellhead sales of natural gas for resale in interstate commerce would control this case. The questions presented in the *Cities Service* case, as stated in the brief for the Federal Power Commission as *amicus curiae* urging reversal of the determination of the Supreme Court of Kansas, were as follows:

> 1. Whether sales of natural gas in interstate commerce for resale, made at the wellhead or prior to the completion of gathering, are subject to regulation by the Federal Power Commission under the Natural Gas Act.
>
> 2. Whether the State of Kansas can lawfully fix a minimum price at the wellhead to be charged for, or attributed to, natural gas where such gas is sold in interstate commerce for resale, either at the wellhead or after the completion of production and gathering.

The Court's *per curiam* opinion in *Cities Service*, reversing the Kansas Supreme Court, cited *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672, and *Natural Gas Pipeline Co.* v. *Panoma Corporation*, 349 U.S. 44. A plain element of the decision was the determination that wellhead sales of natural gas for resale in interstate commerce are subject to Commission regulation, thus disposing of the question presented in the petition here.

2. On January 27, 1958, the Court denied certiorari in two cases from the Fifth Circuit presenting the same issue as does this petition. *Shell Oil Company* v. *Federal Power Commission*, No. 449; *Humble Oil & Refining Co.* v. *Federal Power Commission*, No. 459.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

PAUL A. SWEENEY,
ROBERT S. GREEN,
Attorneys.

WILLARD W. GATCHELL,
General Counsel,
Federal Power Commission.

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